TOWN OF ACTON
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Planning Department

***MEMORANDUM***

***To:*** Planning Board ***Date:*** February 9, 2007

***From:*** Roland Bartl, AICP, Town Planner RB.

***Subject:*** Public Hearing for Proposed Zoning Articles

Attached are the draft zoning articles as they have been available to the public since the public hearing notice appeared in the newspaper.

Also attached are correspondences with Town Counsel (Stephen Anderson, Anderson & Kreiger) regarding articles ZA, ZB, and ZD in attempt to let you in on the conversations I had with him that led to the current drafts. Kristin and I discussed two additional changes we would recommend:

1. As a technical improvement, we would recommend in article ZD, to collapse footnotes 3 and 4 of the Table of Principal Uses into one that then reads like footnote 3 as amended.
2. As a matter of fair treatment, we would include in Article ZB also single- and two-family structures that were destroyed by fire, flood, or other natural disaster. Currently, section 8.3.4 of the Bylaw allows their reconstruction by special permit. This change would give them the same treatment as willfully demolished structures if the article's proposed conditions are met. As an afterthought, perhaps structures damaged by flood should not be included here.

Further, you will see a memo, which I just received from Town Counsel (Tom Schnorr, Palmer & Dodge) regarding articles ZC and the citizen's petition. With respect to article ZC, we should review the recommendations and be prepared to discuss what to incorporate. I would request the Board's permission to work out the details with Tom.

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**ARTICLE ZA.3** **FLEXIBLE PARKING LOT DESIGN**
(Two-thirds vote)

To see if the Town will vote to amend the Zoning Bylaw as follows:

A. In section 6.7, which sets forth standard parking lot design requirements, insert a new section 6.7.9 as follows:

6.7.9 Flexible Parking Lot Design Requirements – A Special Permit or Site Plan Special Permit Granting Authority having jurisdiction, or the Building Commissioner in cases where no special permit or site plan special permit is required, may as an alternative to strict conformance with the requirements of sections 6.7.1, 6.7.2, 6.7.5 thru 6.7.8, and 10.4.3.6 of this Bylaw, including their subsections, and subject to the following requirements, conditions, and findings, approve a Flexible Parking Plan as follows:

6.7.9.1 The special permit or site plan special permit application shall contain a Parking Proof Plan, prepared and stamped by a Registered Professional Engineer, drawn to sufficient detail to demonstrate compliance with all applicable local, State, and Federal laws and regulations, including this Bylaw without the benefit of this section 6.7.9. The Parking Proof Plan shall show the number of proposed parking spaces and identify the total area of impervious paved surface, parking lot landscaping, and OPEN SPACE on the LOT.

6.7.9.2 The special permit or site plan special permit application shall contain a Flexible Parking Plan, prepared and stamped by a Registered Professional Engineer, showing the same number of parking spaces as on the Parking Proof Plan and a parking lot layout that differs in whole or in part from the requirements of sections 6.7.1, 6.7.2, 6.7.5 thru 6.7.8, and 10.4.3.6. The Flexible Parking Plan shall include sufficient detail, including drainage system details, to demonstrate compliance with all other applicable local, State, and Federal laws and regulations, and it shall identify the total area of impervious paved surface, parking lot landscaping, and OPEN SPACE on the LOT. The Flexible Parking Plan shall be submitted with a list of waivers from the stated sections of this Bylaw and supporting materials detailing why the Flexible Parking Plan is more advantageous for the site; better protects the neighbors including abutting residential properties; is more conservative in its use of natural resources; and/or overall would be in the better interest of the Town of Acton as compared to the Parking Proof Plan.

6.7.9.3 In cases where a special permit or site plan special permit is not required, the Parking Proof Plan and Flexible Parking Plan shall be submitted to the Building Commissioner.

6.7.9.4 The Flexible Parking Plan shall comply with the following minimum standards:

a) Except for ACCESS driveways, common driveways, or walkways, all parking spaces and paved surfaces shall be set back a minimum of ten feet from any LOT line.

b) The landscaping of the parking lots shall as a minimum comply with section 6.9.4.7 including subsections a) through e).

6.7.9.5 The Special Permit or Site Plan Special Permit Granting Authority, or the Building Commissioner where no special permit or site plan special permit is required, may in its sole discretion approve the Flexible Parking Plan if the Board or the Building

Commissioner as applicable finds and determines that the Parking Proof Plan conforms to the provisions of this Bylaw; and that the Flexible Parking Plan conforms to section 6.7, except as waived under this sub-section 6.7.9; is more advantageous for the site; is more conservative in its use of natural resources; and overall would be in the better interest of the Town of Acton as compared to the Parking Proof Plan.

B. In section 10.4, Site Plan Special Permit, insert under section 10.4.3.6 the following subsection 3):

   3) See also section 6.7.9 for Flexible Parking Plans and potential waivers from this section 10.4.3.6.

, or take any other action relative thereto.

**SUMMARY**

The zoning bylaw determines in a detailed manner the layout, design, and landscaping of parking lots in Acton. This zoning bylaw amendment would provide for an optional flexible design approach in most zoning districts. The number of parking spaces that can fit in a given area would be determined by way of a proof plan that is in compliance with the detailed standard design requirements. The same number of parking spaces may then be arranged in a different layout and pattern, subject to minimum performance standards for setbacks and landscaping that currently apply in some of Acton's village districts. The result of flexible parking design can be the more conservative use of land and natural resources, more contiguous open space, less impervious pavement coverage, less storm water runoff, and more flexibility to design a parking lot that is context sensitive and potentially more responsive to the needs of the abutters, the neighborhood, and the Town.

Direct inquiries to: Roland Bartl, Town Planner – (978) 264-9636; planning@acton-ma.gov
Selectman assigned: – ; bos@acton-ma.gov

**Board of Selectmen:**
**Finance Committee:**
**Planning Board:**

**ARTICLE ZB.4** **TEAR-DOWNS AND REPLACEMENTS**
(Two-thirds vote) **OF HOMES ON UNDERSIZED LOTS**

To see if the Town will vote to amend the Zoning Bylaw, section 8.3 – Nonconforming Structures, by inserting a new section 8.3.6 as follows:

8.3.6 Replacement of Single- and Two-Family Dwellings – A STRUCTURE in single family residential USE on a nonconforming LOT, that cannot otherwise be built on under the requirements of Section 8.1, may be razed and rebuilt for single family residential USE; and a STRUCTURE in two-family residential USE on a nonconforming LOT, that cannot otherwise be built on under the requirements of Section 8.1, may be razed and rebuilt for two-family residential USE; in both cases subject to the following conditions and limitations:

8.3.6.1 The replacement STRUCTURE shall not exceed the FLOOR AREA RATIO on the LOT of the existing STRUCTURE to be razed.

8.3.6.2 The replacement STRUCTURE shall meet all minimum yard and maximum height requirements of this Bylaw.

8.3.6.3 In the absence of architectural and plot plans for the existing structure to be razed, the FLOOR AREA RATIO shall be determined by using the information on record at the Assessor's office.

8.3.6.4 Additions to the replacement STRUCTURE may, if otherwise permissible, be made after two years following the date of initial occupancy of the replacement STRUCTURE.

, or take any other action relative thereto.

**SUMMARY**

This article would amend the zoning bylaw to allow the tear-down and replacement in kind of single- and two-family structures on lots that are nonconforming due to insufficient frontage or area. The zoning bylaw allows the restoration of structures on such lots after fire or other damage has destroyed less than 50% of their value. But, it does not currently allow their intentional demolition and rebuilding. Since 2000, the Board of Appeals heard seven variance petitions to allow such replacements. Six variances were granted. The cases varied. The replacement of a septic system required the relocation of a house. One house sustained fire damage that exceeded 50% of its value. Other petitions were by homeowners or builders who simply wanted to replace the existing "low value" structure with a modern home. Looking only at smaller single family homes (less than 1,500 square feet in living area) as the more likely candidates for potential replacements, and evaluating their lots only for area, the Planning Department found 237 such small homes on undersized lots. This represents approximately 4% of Acton's single family housing stock.

The statutory criteria for variances – hardship due to soil conditions, shape, or topography – do not strictly apply to most of these situations. Insufficient frontage or area by themselves cannot be considered hardship. This article would remove the zoning bylaw's barrier against demolition and replacement of single- and two-family residences on nonconforming lots, some of which may fall into disrepair after years of estate ownership and abandonment, become an eyesore in the neighborhood, pose a safety hazard, and may be cheaper to replace than to renovate. A replacement residence must comply with applicable setback and height requirements of the zoning bylaw and can initially not be larger than the residence it replaces. Additions can be made later on, just like additions can be made to existing home on non-conforming lots.

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Selectman assigned: – E-mail: bos@acton-ma.gov

**Board of Selectmen:**
**Finance Committee:**
**Planning Board:**

**ARTICLE ZC.2** **WIRELESS COMMUNICATION FACILITIES**
(Two-thirds vote) **AMENDMENTS**

To see if the Town will vote to amend the Zoning Bylaw, section 3.10 – Wireless Communication Facilities, as follows:

A. In section 3.10.6, add the following sentences to the end of sub-section 3.10.6.1:

"The height of a Wireless Communication Facility shall be the higher of:

a) The elevation of the top of the pole structure above the mean ground elevation directly at the base of the pole; or

b) The elevation of the top of the pole structure above the mean ground elevation within 500 feet of the base of the pole.

B. In section 3.10.6, insert new sub-sections 3.10.6.2 and 3.10.6.3 as follows:

3.10.6.2 Wireless Communication Facilities shall be single monopoles with internal or flush-mounted antennae, also known as stealth monopoles. On a case by case basis, the Planning Board may allow monopoles with externally mounted equipment arrays, generally when aesthetic considerations are less important.

3.10.6.3 Wireless Communication Facilities shall be located, designed, and constructed to support a final maximum height allowed under section 3.10.6.1 above fully loaded with wireless service transmitters, antennae, and equipment in the top half.

And, renumber existing sub-sections 3.10.6.2 through 3.10.6.9 to become sub-sections 3.10.6.4 through 3.10.6.11 respectively.

C. In section 3.10.6.5 (renumbered to 3.10.6.7 in A. above), insert a new sub-section e) as follows:

e) The Planning Board may require long-term easements, leases, licenses, or other enforceable legal instruments that fully support a Wireless Communications Facility at its maximum potential technical capacity, including sufficient space for facility base equipment, adequate access and utility easements to the facility from a public STREET, and the right for all telecommunication service providers to co-locate on the facility and to upgrade the utilities and equipment as needed for maintaining and improving service and capacity.

D. In section 3.10.6.7 (renumbered to 3.10.6.9 in A. above), delete the word "vegetation" and replace it with "foliage".

*[Note: The relevant sentence in section 3.10.6.7 currently states: The application shall also include maps showing areas where the proposed top of the Wireless Communication Facility will be visible when there is vegetation and when there is not.]*

E. In section 3.10.6.9 (renumbered to 3.10.6.11 in A. above), delete sub-section a), and renumber current subsections b) through j) to become sub-sections a) through i) respectively.

*[Note: Section 3.10.6.9 sets forth mandatory findings that the Planning Board as the Special Permit Granting Authority for Wireless Telecommunication Facilities must make in the affirmative when granting special permits. In the current sub-section a) the required finding is that the facility "is designed to minimize any adverse visual or economic impacts on abutters and other parties in interest, as defined in M.G.L. c. 40A, s.11".]*

, or take any other action relative thereto.

## SUMMARY

This article would make several amendments to the existing regulations in the zoning bylaw for wireless communication facilities, which includes cell towers. The amendments reflect lessons learned since the adoption of special permit standards for cell towers in the late 1990's. The original adoption of these standards came in response to the Federal Telecommunications Act of 1996, which, in summary, requires that Towns allow seamless mobile communications in a competitive market place. Towns may regulate cell towers to minimize their aesthetic effects, but cannot prohibit them or thwart the Federal law's intent for achieving seamless mobile communication.

Part A of this article further defines how the height of a wireless communication facility is measured.

Part B states a preference for "stealth monopoles" without externally mounted equipment, while retaining the discretion for the Planning Board, as the special permit granting authority, to allow external mounting in some cases, such as in remote locations or for small equipment installed for Town agency use. Stealth monopoles have proven to be the least noticeable type of tower.

The zoning bylaw limits the height of cell towers to 175 feet. Part B also contains an amendment that specifies that every tower must be sited and built to eventually support the maximum allowed height of 175 feet. This ensures that approved towers can be used to their maximum capacity allowed under the bylaw. The specified height usually allows all regional and national mobile phone operators to co-locate on a tower with effective signal transmission above the tree line. Every mobile phone service provider occupies a certain amount of vertical space on a tower. Sufficient tower height enlarges signal coverage areas and allows for co-location of service providers as tenants on the same tower. The trade-off is between fewer taller towers as currently allowed in the zoning bylaw, or a greater number of shorter single occupancy towers.

Part C aims to secure maximum utility of an approved tower location by requiring that all rights and easements are in place for all operators to locate on the tower, giving them access, and allowing unlimited technical and capacity upgrades.

Part D clarifies the intent of the bylaw to require a visual survey for visibility conditions in both winter and summer months.

Part E would delete one of ten findings that the Planning Board must make to grant a special permit. The subject finding, that the facility is *"is designed to minimize any adverse visual or economic impacts on abutters and other parties in interest, as defined in M.G.L. c. 40A, s.11"* is too subjective and without measurable criteria to be a helpful decision making tool. The general special permit findings of section 10.3.5 still apply, which include a finding that the proposed use will not be detrimental or injurious to the neighborhood in which it is to take place.

Direct inquiries to: Roland Bartl, Town Planner – (978) 264-9636; planning@acton-ma.gov
Selectman assigned: – E-mail: bos@acton-ma.gov

**Board of Selectmen:**
**Finance Committee:**
**Planning Board:**

**ARTICLE ZD.2** **REMOVAL OF OWNER OCCUPANCY REQUIREMENT**
(Two-thirds vote) **FOR MULTI-FAMILY USES**

To see if the Town will vote to amend the Zoning Bylaw, section 3, by deleting the second and third sentences in footnote 3 of the Table of Principal Uses.

*[Note: The sentences that are proposed for deletion read as follows:*
*"At least one of the DWELLING UNITS shall be occupied by the owner of the property. For purposes of this footnote, the owner shall be defined as one or more individuals residing in a DWELLING UNIT who hold legal or beneficial title and for whom the DWELLING UNIT is the primary residence for voting and tax purposes."]*

, or take any other action relative thereto.

**SUMMARY**

This article would eliminate the owner occupancy requirement for multi-family dwellings in West Acton's Village Residential District and in the South Acton Village District. These two zoning district remain the only two areas where owner occupancy is still required. No such requirement applies in the R-A, R-AA, EAV, EAV-2, or WAV districts where multi-family uses are also allowed, and no owner occupancy requirement applies to single-family homes. The owner-occupancy requirement acts as a barrier to creating rental housing stock and therefore also as a barrier to affordable market-rate rentals. The requirement is also impossible and unrealistic to enforce.

Direct inquiries to: Roland Bartl, Town Planner – (978) 264-9636; planning@acton-ma.gov
Selectman assigned: – E-mail: bos@acton-ma.gov

**Board of Selectmen:**
**Finance Committee:**
**Planning Board:**

# The Commonwealth of Massachusetts

DATE and TIME this paper received by Registrars.
December 8, 2006
4:00 PM

ANNUAL

# PETITION FOR A [redacted] TOWN MEETING

Pursuant to General Laws, Chapter 39, section 10.

TOWN ACTON, MA

## SUBJECT OR SUBJECTS REQUESTED FOR ACTION AT THE MEETING:

**(To be filled in by petitioners. If space is insufficient, attach additional page of description to each petition form before signatures are gathered.)**

WHEREAS: Wireless Communication Facilities for telephone communication (hereinafter Cell Towers) are necessary for the use of modern telephones including cell-phones; and Cell towers are taller then most residential homes; and Cell towers are maintained in a large cleared parcel of land which makes their presence visible for a considerable distance; and Cell towers are unsightly as objects near residential homes; and Cell Towers have equipment near their base which makes objectionable loud noises; and Cell Towers in a Residentially zoned area contribute to a reduction in value of homes in the vicinity of a Cell Tower, and Cell Towers should not be placed near Public Schools; and

WHEREAS: Present the zoning Bylaw of the Town of Acton (hereinafter Acton) permit construction of Cell Towers near Public Schools and in areas zoned Residential:

IT IS HEREBY RESOLVED: to amend the zoning Bylaw of Acton to prohibit construction of Cell Towers in areas near Public Schools and in areas zoned Residential.

IN FURTHERANCE OF THIS RESOLUTION: that construction of Cell Towers is to be prohibited in areas near Public Schools and in areas zoned Residential in Acton, the following changes to the Zoning Bylaw of Acton are hereby enacted:

1. Article 37, Section 3.4.10 of the Table of Principal Uses", change the entry for "Wireless Communication Facility" under the column "Residential Districts" to "N" at all entries.

1.1. Add to Article 37 Section 3.10 "Special Requirements for Wireless Communication Facilities" the following new section:
"3.10.4.7 Any Wireless Communication Facility must be located more than 1,000 feet from any Public School building or playground or real estate held by either a School District or the Town of Acton for the construction of a public school building or playground."

1.2. The Acton Board of Selectmen is hereby requested to form a committee to study the present Zoning Bylaw Article 37 "Wireless Communication Facilities" and to propose improvements thereto.

## SIGNER INFORMATION

**INSTRUCTIONS TO SIGNERS**

For your signature to be valid, you must be a registered voter in the town and your signature should be written substantially as registered. Do NOT sign more than one petition for the same subject.

If you are prevented by physical disability from writing, you may authorize some person to write your name and residence in your presence.

If you have NOT moved since January 1 of this year, you need complete only columns I and II.

If you HAVE moved since January 1 of this year, you must complete columns I, II and III.

**SIGNER'S STATEMENT**

**We, the undersigned, are qualified voters of the Town of ACTON, MA, and in accordance with the provisions of law, request a special town meeting for the purposes above.**

| | CHECK | I SIGNATURES to be made in person with name substantially as registered. | II NOW LIVING AT (Street & number, if any) | PREC. | III RESIDENCE ON JANUARY 1, 19__ If different (Street & number, if any)(City or town) |
|---|---|---|---|---|---|
| 1 | ✓ | Catherine E Monahan | 14 Arlington St, Acton | | |
| 2 | ✓ | James F Monahan | 14 ARLINGTON ST ACTON | | |
| 3 | ✓ | [illegible] | 47 Jackson Dr Acton | | |
| 4 | ✓ | Melanie Meagher | 47 Jackson Dr Acton | | |
| 5 | ✓ | [illegible] | 7 Lincoln Dr Acton | | |
| 6 | ✓ | [illegible] | 7 Lincoln Dr Acton | | |
| 7 | ✓ | Elizabeth Matthews | 11 Lincoln Dr Acton | | |
| 8 | ✓ | Al Matthews | 11 Lincoln Dr Acton | | |
| 9 | ✓ | Lu Fillo | 18 ARLINGTON ST, ACTON | | |
| 10 | ✓ | Frank Fillon | 18 Arlington St, Acton | | |
| 11 | ✓ | Janice M. Cunliffe | 23 Arlington St. | | |
| 12 | ✓ | Allan R. Taylor | 23 Arlington St. | | |

ATTENTION REGISTRARS: Before certifying signatures, see instructions to Registrars on reverse side of this paper.

OVER

ATTENTION VOTERS: Before signing, read signer information on other side.

ATTENTION REGISTRARS: Before certifying signatures, see Instructions to Registrars, below.

TOWN _____

| | CHECK | I SIGNATURES to be made in person with name substantially as registered. | II NOW LIVING AT (Street & number, if any) | PREC. | III RESIDENCE ON JANUARY 1, 19__ If different (Street & number, if any)(City or town) |
|---|---|---|---|---|---|
| 13 | ✓ | [illegible] | 899 CANAL ST. | | |
| 14 | ✓ | [illegible] | 21 ALDAWAN RD. | | |
| 15 | ✓ | [illegible] | 161 Newtown Rd. | | |
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REGISTRAR INFORMATION

Registrars of Voters check thus ✓ against the name of each qualified voter to be certified.

For names not certified, use the code opposite:

N - no such registered voter at that address.
S - unable to identify signature or address as that of voter because of form of signature or address, or illegible.
T - signed too many petitions.

CERTIFICATION OF SIGNATURES

We certify that the 15 (number of names certified) above signatures checked thus ✓ are names of qualified voters of this town.

PCTOP
Town

Katherine F Arnold
[illegible] Leonard III
Registrars of Voters

EDWARDS ANGELL PALMER & DODGE LLP

101 Federal Street Boston, MA 02110 617.439.4444 fax 617.439.4170 eapdlaw.com

**TO:** Roland Bartl, AICP, Acton Town Planner

**CC:** David R. Rodgers

**FROM:** Thomas G. Schnorr

**DATE:** February 9, 2007 **CLIENT-MATTER NO.:** 200228-1

**RE:** Proposed Amendments to Acton's Wireless Communications Facilities Zoning Bylaw

I have quickly reviewed the proposed amendments to Section 3.10 (Special Requirements for Wireless Communications Facilities) (the "Section 3.10 Amendments") and the December 8, 2006, citizens petition (the "Citizens Petition") proposing that the Zoning Bylaw be amended to make wireless facilities a prohibited use in residential districts and near public schools and playgrounds that you sent to me by email on January 18, 2007. My comments on both follow.

## Section 3.10 Amendments

Set forth below are my comments on the Section 3.10 Amendments. I believe my comments and suggested edits are self-explanatory, but if not, please give me a call and I'll explain my thoughts in more detail:

A. New sentences added to the end of Subsection 3.10.6.1:

I would recommend revising the first line of the new sentences being added to the end of Section 3.10.6.1 to read as follows (my suggested new language appears in italics):

> "*For purposes of determining* the height of a Wireless Communication Facility, *the height* shall be the higher of *the two vertical distances measured as follows*: ..."

B. New Subsections 3.10.6.2 and 3.10.6.3:

I understand the rationale for limiting facilities to "stealth monopoles", but wonder if the Town would want to consider modifying the second sentence to give the Planning Board the authority, through the special permit process, the ability to approve other types of truly "stealth structures"? I know that Subsection 3.10.5.1 allows stealth facilities that consist of facilities entirely enclosed within a building or structure, but there are other types of stealth structures that some towns have found acceptable; these would include antenna structures designed to look like light poles or flag poles, and structures designed to resemble natural features such as trees or

rock outcroppings (although I must admit that some "trees" look awful, but others work quite well.

I would recommend revising new Subsection 3.10.6.3: to read as follows (again, my suggested new language appears in italics):

> "Wireless Communication Facilities shall be located, designed, and constructed *to include a stealth monopole that is, or that is engineered to be structurally extendable to be, the* maximum height allowed under section 3.10.6.1 above *capable of accommodating the maximum number of technically feasible co-locator antennae in the portion of the pole above the tree line, as well as an equipment shelter or other enclosed space physically able to, or capable of being enlarged to,* fully *accommodate the maximum number of* wireless service transmitters and other equipment *necessary for the maximum number of technically feasible co-locators at the site."*

C. New subsection e) added to the end of Section 3.10.6.5 (being renumbered to 3.10.6.7):

I would revise this new subsection to read as follows (again, my suggested new language appears in italics):

> "The Planning Board may require long-term easements, leases, licenses, or other enforceable legal instruments that fully support a Wireless Communications Facility at its maximum potential technical capacity, including sufficient space for facility base equipment *to accommodate the maximum number of technically feasible co-locators at the site,* adequate access and utility easements to the facility from a public STREET, and the right for *the maximum number of technically feasible* telecommunication service provider *co-locators* to co-locate on the facility and the right to upgrade the utilities and equipment as needed for maintaining and improving service and capacity."

D. and E.: I have no comments.

## Citizens Petition

The Citizens Petition seeks to amend the Zoning Bylaw to make wireless communications facilities a prohibited use in all Residential Zoning Districts and within 1,000 feet of any "Public School building or playground or estate held by either a School District or the Town of Acton for the construction of a public school building or playground."

As discussed below, I have a number of concerns about the ambiguity of the language of the proposed new Section 3.10.4.7. I am also concerned that the Citizens Petition's no-build zone around school and playgrounds (which suggests a health concern) and its absolute prohibition of wireless facilities in residential districts and near school and playgrounds may expose the Town to challenge by a wireless carrier claiming that these provisions violate Section

704 of the Federal Telecommunications Act of 1996 ("Section 704"), which among other things preempts local zoning regulations or decisions premised directly or indirectly on the environmental effects of radio frequency (RF) emissions and provides that a town may not, through zoning or other local bylaws, impose and enforce regulations in a manner that prohibits or has the effect of prohibiting wireless communications services from being provided in the town.

Language Concerns about Section 3.10.4.7:

First, how is the 1,000 foot prohibited area to be measured? From the walls of the school buildings or the exterior perimeter or the playground or from the property boundary lines of the parcel or parcels on land on which the school building or playgrounds are located?

Second, in the phrase "Public School building or playground" is "playground" intended to be limited to mean only "public school playgrounds"? Would town-owned or privately owned playgrounds and playing fields be included or not?

Third, it strikes me that the thinly disguised purpose for this provision is the citizens' deeply felt belief that the RF emissions from wireless facilities are a danger to health, particularly the health of children (see more on this point in my discussion below about my Section 704 concerns). But why is it then limited to only public schools. I know that there is at least on private school in town. From a land use planning perspective it seems to me to distinguish between public and private schools makes no sense.

Fourth, what does the phrase land "held by either a School District or the Town of Acton for the construction of a public school building or playground" mean? Does it mean land owned by a school district or the Town that is identified in a five year plan as intended for school building or playground use, or would it have to mean land that was expressly acquired, and approved by a Town Meeting vote, for the purpose of using it school building or playground use? Could it mean any Town-owned land that the Selectmen or Planning Board or even a citizens petition has discussed as possibly being available for school building or playground use?

Section 704 Concerns.

RF Emissions. As noted above, Section 704 and the case law that has evolved under it over the past 10 years makes it clear that a town may not regulate the placement of a wireless facility for reasons that are based, directly or indirectly, on the perceived environmental or health effects of radio frequency emissions, as long as the wireless provider in fact complies with applicable Federal radio frequency emission rules. As I mentioned in my discussion above about the ambiguity of some of the language in the proposed new Section 3.10.4.7, I believe the 1,000 foot setback from schools and playgrounds is in essence a thinly disguised attempt by the citizens to regulate the location of wireless facilities based upon the citizens' belief that wireless emissions are dangerous and unhealthy. This concern become greater if the citizens group has at

any time indicated in any of its materials or presentations to the Town residents or Town boards mentioned RF emissions concerns or health concerns. Thus for example, if a prospective wireless carrier could prove, by clear and convincing evidence, that there in fact existed a substantial wireless service coverage gap in the Town and that the only location physically capable of filling that gap was closer than 1,000 feet to a school or playground but the Planning Board and/or ZBA prohibited the site due to the 1,000 foot setback, I have no doubt that the carrier would file a lawsuit challenging the validity of the 1,000 foot setback arguing that it was a mere pretext for the Town to regulate wireless facilities locations on the basis of the Town's perceived health concerns about the facility's RF emissions.

Effective Prohibition of Wireless Services. As noted above, Section 704 and the case law that has evolved under it over the past 10 years makes it clear that a town may not adopt and/or enforce zoning bylaws in any manner that prohibits or has the effect of prohibiting wireless services being provided in the town. The Citizens Petition, when viewed in light of the Massachusetts Zoning Statute (M.G.L. Chapter 40A) and Section 10.5 of the Acton Zoning Bylaw, takes a giant first step toward violating that provision of Section 704.

Section 10 of Chapter 40A provides that a town permit granting authority cannot (i.e., does not have the statutory authority to) grant a use variance unless the town's zoning bylaw explicitly authorizes the town's permit granting authority to grant use variances. As you know, Section 10.5 of the Acton Zoning Bylaw provides that variances authorizing a use not permitted in a particular zoning district shall not be granted. In other words, not only does the Acton Zoning Bylaw not allow the ZBA to grant use variances, it explicitly prohibits the ZBA from granting them.

This means that as a result of Chapter 40A and Section 10.5 of the Acton Zoning Bylaw, the Citizens Petition would have the effect of imposing an absolute ban on wireless communications facilities within residential zoning districts and the 1,000 foot setback areas around every school and playground. A quick look at the Town's Zoning Map shows that residentially zoned areas alone make up a substantial portion of the Town's land area. Since the Citizens Petition would therefore put all residential areas "off-limits," wireless carriers would be forced to try to site their facilities in the Town's business, commercial and industrial districts (except for portions of those districts within the 1,000 foot school/playground setback areas).

Without undertaking a detailed analysis of the topography and tree canopy throughout the Town, an RF analysis of what portions of the Town currently do and don't have wireless service coverage and whether there exist, as a matter of fact any "significant coverage gaps," and whether there exist any sites within the business, commercial and industrial zoning districts that would meet the geographic and technical requirements for wireless facilities that could close any such coverage gaps, I can't conclusively tell you whether or not the absolute ban on placing sites in residential districts and the 1,000 foot setback proposed by the Citizens Petition, together with the existing Federal environmental constraints on placing wireless sites in wetlands, conservation lands and protected animal habitats, would violate Section 704. I can tell you, however, that if a

wireless carrier could, by clear and convincing factual evidence (the courts are not in complete agreement as to exactly what specific evidence needs to be presented), demonstrate that (i) there were one or more significant coverage gaps in the Town, (ii) that those service gaps could not be closed by siting a facility in a business, commercial or industrial zoning district due to the technical constraints of wireless technology and the surrounding geography and foliage, but (iii) those significant service gaps could be closed only by placing a facility in a residential district or within the 1,000 foot setback were technically favorable conditions existed, then I have no doubt that the carrier would file a lawsuit challenging the validity of the new bylaw provisions, arguing that it had the effect of prohibiting wireless service in the Town.

I hope my comments are helpful.

**ARTICLE ZD** **REMOVAL OF OWNER OCCUPNACY REQUIREMENT**
(Two-thirds vote) **FOR MULTI-FAMILY USES**

To see if the Town will vote to amend the Zoning Bylaw, section 3, by deleting the second and third sentence in footnote 3 of the Table of Principal Uses.

*[Note: The sentences that are proposed for deletion read as follows:*
*"At least one of the DWELLING UNITS shall be occupied by the owner of the property. For purposes of this footnote, the owner shall be defined as one or more individuals residing in a DWELLING UNIT who hold legal or beneficial title and for whom the DWELLING UNIT is the primary residence for voting and tax purposes."]*

, or take any other action relative thereto.

**SUMMARY**

This article would eliminate the owner occupancy requirement for multi-family dwellings in West Acton's Village Residential District and in the South Acton Village District. These two zoning district remain the only two areas where owner occupancy is still required. No such requirement applies in the R-A, R-AA, EAV, EAV-2, or WAV districts where multi-family uses are also allowed, and no owner occupancy requirement applies to single-family homes. The owner-occupancy requirement acts as a barrier to creating rental housing stock and therefore also as a barrier to affordable market-rate rentals. The requirement is also impossible or unrealistic to enforce. ~~The assumption that owner occupancy brings with it pride in ownership that would ensure well-maintained rental properties does not appear to be reflected in reality. There are many investment rental properties in Acton, which for the most part are being kept in decent condition and appearance. On the other hand, there are from time to time owner-occupied properties, including some single family homes that appear neglected, run-down, or abandoned.~~

**Comment:** Deleted in late January as per suggestion of Nancy Tavernise and Lauren Rosenzweig.

Direct inquiries to: Roland Bartl, Town Planner – (978) 264-9636, planning@acton-ma.gov
Selectman assigned: – E-mail: bos@acton-ma.gov

**Board of Selectmen:**
**Finance Committee:**
**Planning Board:**

## Roland Bartl

**From:** Roland Bartl
**Sent:** Wednesday, January 31, 2007 5:28 PM
**To:** Garry Rhodes; Stephen Anderson
**Subject:** RE: Acton/GenPlBd - Draft Zoning Article on Flexible Parking

I think as drafted - being silent on existing nonconformities, the proof plan could maintain such non-conformities as per section 8.4; and only new parking would have show a proof plan that complies.

*Roland Bartl, AICP*
*Town Planner, Town of Acton*
*472 Main Street*
*Acton, MA 01720*
*978-264-9636*

-----Original Message-----
**From:** Garry Rhodes
**Sent:** Tuesday, January 30, 2007 2:38 PM
**To:** Stephen Anderson; Roland Bartl
**Subject:** RE: Acton/GenPlBd - Draft Zoning Article on Flexible Parking

I do not see the Flexible Parking Plan solving the parking problem on Powder Mill Road.
I am have a hard time drawing a connection between 8.4 and the new 6.7.9. When faced with applying this to real time when nonconforming paving exist this new section may fail unless a "Proof Plan" can demonstrate compliance with the Bylaw. Does the "Proof Plan" have to show how existing nonconforming paving would comply or just what is being proposed?
Garry

-----Original Message-----
**From:** Stephen Anderson
**Sent:** Sunday, January 28, 2007 6:47 PM
**To:** Roland Bartl
**Cc:** Garry Rhodes
**Subject:** Acton/GenPlBd - Draft Zoning Article on Flexible Parking

<<ZA.2 flexible parking.doc>>

Hi Roland:

I suggested one edit on the attached draft.

Proposed Section 6.7.9.4 states that, "The Flexible Parking Plan shall comply with the following minimum standards: a) Except for access driveways all parking spaces and paved surfaces shall be set back a minimum of ten feet from any LOT line."

Existing Section 6.7.2 provides that, "Except as may be required elsewhere in this Bylaw, no parking space or other paved surface, other than ACCESS driveways, common driveways or walkways, shall be located within 30 feet of the front LOT line and within 10 feet of the side and rear LOT lines, and notwithstanding the foregoing, no parking space or other paved surface; other than ACCESS driveways, common driveways or walkways; shall be located within the limits of a landscaped buffer area required under Section 10.4.3.5. and Section 10.4.3.6."

Three questions:

1. On proposed Section 6.7.9.4, should you add "common driveways or walkways" to the exception at the beginning of (a)?

2. On proposed Section 6.7.9.4, should you capitalize "ACCESS" as in 6.7.2?

3. What is the relationship between the proposed section and any pre-existing, non-cnforming pavement? Garry has a potential zoning violation on Powder Mill Road. Could this Section be used to cure that?

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web site: www.andersonkreiger.com

ARTICLE ZA.2 FLEXIBLE PARKING LOT DESIGN
(Two-thirds vote)

To see if the Town will vote to amend the Zoning Bylaw as follows:

A. In section 6.7, which sets forth standard parking lot design requirements, insert a new section 6.7.9 as follows:

6.7.9 Flexible Parking Lot Design Requirements – A Special Permit or Site Plan Special Permit Granting Authority having jurisdiction, or the Building Commissioner in cases where no special permit or site plan special permit is required, may as an alternative to strict conformance with the requirements of sections 6.7.1, 6.7.2, 6.7.5 thru 6.7.8, and 10.4.3.6 of this Bylaw, including their subsections, and subject to the following requirements, conditions, and findings, approve a Flexible Parking Plan as follows:

6.7.9.1 The special permit or site plan special permit application shall contain a Parking Proof Plan, prepared and stamped by a Registered Professional Engineer, drawn to sufficient detail to demonstrate compliance with all applicable local, State, and Federal laws and regulations, including this Bylaw without the benefit of this section 6.7.9. The Parking Proof Plan shall show the number of proposed parking spaces and identify the total area of impervious paved surface, parking lot landscaping, and OPEN SPACE on the LOT.

6.7.9.2 The special permit or site plan special permit application shall contain a Flexible Parking Plan, prepared and stamped by a Registered Professional Engineer, showing the same number of parking spaces as on the Parking Proof Plan and a parking lot layout that differs in whole or in part from the requirements of sections 6.7.1, 6.7.2, 6.7.5 thru 6.7.8, and 10.4.3.6. The Flexible Parking Plan shall include sufficient detail, including drainage system details, to demonstrate compliance with all other applicable local, State, and Federal laws and regulations, and it shall identify the total area of impervious paved surface, parking lot landscaping, and OPEN SPACE on the LOT. The Flexible Parking Plan shall be submitted with a list of waivers from the stated sections of this Bylaw and supporting materials detailing why the Flexible Parking Plan is more advantageous for the site; better protects the neighbors including abutting residential properties; is more conservative in its use of natural resources; and/or overall would be in the better interest of the Town of Acton as compared to the Parking Proof Plan.

6.7.9.3 In cases where a special permit or site plan special permit is not required, the Parking Proof Plan and Flexible Parking Plan shall be submitted to the Building Commissioner.

6.7.9.4 The Flexible Parking Plan shall comply with the following minimum standards:

a) Except for access driveways all parking spaces and paved surfaces shall be set back a minimum of ten feet from any LOT line.

b) The landscaping of the parking lots shall as a minimum comply with section 6.9.4.7 including subsections a) through e).

6.7.9.5 The Special Permit or Site Plan Special Permit Granting Authority, or the Building Commissioner where no special permit or site plan special permit is required, may in its sole discretion approve the Flexible Parking Plan if the Board or the Building Commissioner as applicable finds and determines that the Parking Proof Plan conforms to the provisions of this Bylaw; and that the Flexible Parking Plan conforms to section 6.7, except as waived under this sub-section 6.7.9; is more advantageous for the site; is more conservative in its use of natural resources; and overall would be in the better interest of the Town of Acton as compared to the Parking Proof Plan.

B. In section 10.4, Site Plan Special Permit, insert under section 10.4.3.6 the following subsection 3):

3) See also section 6.7.9 for Flexible Parking Plans and potential waivers from this section 10.4.3.6.

, or take any other action relative thereto.

SUMMARY

The zoning bylaw determines in a detailed manner the layout, design, and landscaping of parking lots in Acton. This zoning bylaw amendment would provide for an optional flexible design approach in most zoning districts. The number of parking spaces that can fit in a given area would be determined by way of a proof plan that is in compliance with the detailed standard design requirements. The same number of parking spaces may then be arranged in a different layout and pattern, subject to minimum performance standards for setbacks and landscaping that currently apply in some of Acton's village districts. The result of flexible parking design can be the more conservative use of land and natural resources, more contiguous open space, less impervious pavement coverage, less storm water runoff, and more flexibility to design a parking lot that is context sensitive and potentially more responsive to the needs of the abutters, the neighborhood, and the Town.

Direct inquiries to: Roland Bartl, Town Planner – (978) 264-9636; planning@acton-ma.gov
Selectman assigned: – ; bos@acton-ma.gov

**Board of Selectmen:**
**Finance Committee:**
**Planning Board:**

## Roland Bartl

**From:** Stephen Anderson
**Sent:** Sunday, January 28, 2007 6:32 PM
**To:** Roland Bartl
**Subject:** Acton/GenPlBd - Draft Zoning Article on Tear Downs

<<ZB.3 Tear-downs on undersized lots.doc>>

Roland:

I have suggested a few edits to this draft, mainly semantic.

Steve

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**ARTICLE ZB.3**
(Two-thirds vote)

**TEAR-DOWNS AND REPLACEMENTS OF HOMES ON UNDERSIZED LOTS**

To see if the Town will vote to amend the Zoning Bylaw, section 8.3 – Nonconforming Structures, by inserting a new section 8.3.6 as follows:

8.3.6 Replacement of Single- and Two-Family Dwellings – A STRUCTURE in single family residential USE on a nonconforming LOT, that cannot otherwise be built on under the requirements of Section 8.1, may be razed and rebuilt for single family residential USE; and a STRUCTURE in two-family residential USE on a nonconforming LOT, that cannot otherwise be built on under the requirements of Section 8.1, may be razed and rebuilt for two-family residential USE; in both cases subject to the following conditions and limitations:

8.3.6.1 The replacement STRUCTURE shall not exceed the FLOOR AREA RATIO on the LOT of the existing STRUCTURE to be razed , or 0.30, whichever is greater.

Deleted: or previous

8.3.6.2 The replacement STRUCTURE shall meet all minimum yard and maximum height requirements of this Bylaw.

8.3.6.3 In the absence of architectural and plot plans for the existing structure to be razed , the FLOOR AREA RATIO shall be determined by using the information on record at the Assessor's office.

8.3.6.4 Additions to the replacement STRUCTURE may, if otherwise permissible, be made after two years following the date of initial occupancy of the replacement STRUCTURE.

Deleted: for

, or take any other action relative thereto.

**SUMMARY**

This article would amend the zoning bylaw to allow the tear-down and replacement in kind of single- and two-family structures on lots that are nonconforming due to insufficient frontage or area. The zoning bylaw allows the restoration of structures on such lots after fire or other damage has destroyed less than 50% of their value. But, it does not currently allow their intentional demolition and rebuilding. Since 2000, the Board of Appeals heard seven variance petitions to allow such replacements. Six variances were granted. The cases varied. The replacement of a septic system required the relocation of a house. One house sustained fire damage that exceeded 50% of its value. Other petitions were by homeowners or builders who simply wanted to replace the existing "low value" structure with a modern home. Looking only at smaller single family homes (less than 1,500 square feet in living area) as the more likely candidates for potential replacements, and evaluating their lots only for area, the Planning Department found 237 such small homes on undersized lots. This represents approximately 4% of Acton's single family housing stock.

The statutory criteria for variances – hardship due to soil conditions, shape, or topography – do not strictly apply to most of these situations. Insufficient frontage or area by themselves cannot be considered hardship. This article would remove the zoning bylaw's barrier against demolition and replacement of single- and two-family residences on nonconforming lots, some of which may fall into disrepair after years of estate ownership and abandonment, become an eyesore in the neighborhood, pose a safety hazard, and may be cheaper to replace than to renovate. A replacement residence must comply with applicable setback and height requirements of the zoning bylaw and can initially not be larger than the residence it replaces. Additions can be made later on, just like additions can be made to existing home on non-conforming lots.

Direct inquiries to: Roland Bartl, Town Planner – (978) 264-9636; planning@acton-ma.gov
Selectman assigned: – E-mail: bos@acton-ma.gov

**Board of Selectmen:**
**Finance Committee:**
**Planning Board:**

## Roland Bartl

**From:** Roland Bartl
**Sent:** Thursday, January 25, 2007 12:49 PM
**To:** Stephen Anderson
**Subject:** RE: Acton/GenPlBd - Draft Zoning Article on Tear Downs

Steve:

Thanks for your thoughts and advise on this. Attached is a new version, which is the result of more Planning Board discussion ion the matter. Also, I now use FAR instead of straight floor area dimensions. Essentially, the Board does not want to allow builders' speculation and mansionization to occur on these undersized lots, but recognizes that it is sometimes cheaper and easier to replace a building than to renovate it. So, they have pretty much scrapped the possibility for replacements with larger buildings as in the earlier draft except for what the creative calculation of FAR might accommodate. I have added the possibility for later additions by a home owner - lets see what they do with that. I have also limited the article to single-and two-family structures, since we have already addressed the same issue with multi-family structures in section 8.7.

As to your questions:
The article's only intent is to allow the replacement of residential structures on non-conforming lots. Garry tells me that presently this could not be done unless the situations qualifies for a variance. This may include structures on undersized lots that might fall into the category address in section 8.3.5. We are not trying to deal with other dimensional issues. They are handled for existing structure under sections 8.3.2 and 8.3.3, and this article would specifically seek the replacement structure to comply with setbacks, etc.

The last section of the draft article as now drafted is intended to allow for the new structure the same as section 8.3.2 allows for the previous structure, only with a 2-year delay.

Let me know what you now think. Thank you for your comments and corrections on the other articles. I incorporated them for the most part.

On the flexible parking article: One of your suggested changes towards the end would have sought the flexible plan to comply with section 6.7, whereas some of sections of 6.7 would be waivable under the flexible plan. So, I inserted a clause for this. Also, I understand why made the additions to the required findings, but I would have preferred the public benefit as the sole criterion. Public benefits include environmental benefits such as the more conservative use of natural resources. However, the flexible plan may not always be to the advantage of every abutter and I thought it would be better if the decision makers were not bound by a finding that it better protects abutters. So I have, for now, not included this phrase. A revised draft of this article is also attached.

Finally, on the article about owner occupancy, the reference to footnote was correct. You can also view the current zoning bylaw on the Town of Acton website - under the Planning Department page is a link to a pdf file.

Regards -

*Roland Bartl, AICP*
*Town Planner, Town of Acton*
*472 Main Street*
*Acton, MA 01720*
*978-264-9636*

-----Original Message-----
**From:** Stephen Anderson
**Sent:** Friday, January 19, 2007 12:15 PM
**To:** Roland Bartl

**Cc:** Scott F. Lacy; Ryan D. Pace; William L. Lahey; Arthur Kreiger; Kevin D. Batt
**Subject:** Acton/GenPlBd - Draft Zoning Article on Tear Downs

<<ZB Tear-downs on undersized lots.doc>>
Roland:

We have the following comments on the proposed Zoning Bylaw amendment entitled "TEAR-DOWNS AND REPLACEMENTS OF HOMES ON UNDERSIZED LOTS:"

**1. Application of c. 40A, s. 3**

As you know, General Laws, c 40A, s. 3 states that "no zoning ordinance or by-law shall regulate or restrict the interior area of a single family residential building..." We have found no cases interpreting this provision in general or as applied to a bylaw of the type you propose.

We do note that Massachusetts courts are sensitive to zoning amendments that nullify other protections afforded by c 40A, s. 3. See, e.g., *Trustees of Boston College v. Board of Aldermen of Newton*, 58 Mass.App.Ct. 794, 800 (2003) (A municipality may not "through the guise of regulating bulk and dimensional requirements under the enabling statute, proceed to 'nullify' the use exemption permitted to an educational institution." ). We expect that a court would be sensitive to a "nullification" argument if it believes a zoning amendment seeks to regulate or restrict the interior area of a single family residential building under the guise of another formula.

In the present situation, Section 8.3.6.4 provides that, "The replacement STRUCTURE shall not exceed the NET FLOOR AREA of the previous STRUCTURE on the LOT by more than 50 percent." Under Section 1.3.8, NET FLOOR AREA ("NFA") is defined as, "The total of all floor areas of a BUILDING including basement and other storage areas, but not including stairways, elevator wells, rest rooms, common hallways and BUILDING service areas, and not including areas used for a Child Care Facility as defined in Section 3.4.6 of this Bylaw provided that such Child Care Facility is accessory to a PRINCIPAL USE located in the same BUILDING or on the same LOT."

On its face, the definition of NFA *appears* to be focused on the interior of the structure, even though cogent arguments can be made that it is not (because it does not regulate how the interior space is laid out or used).

The Gross Floor Area ("GFA") *appears* to be one step removed from the interior of the structure, as its definition expressly measures form the exterior wall face. See section 1.3.7 (defining GFA as "The sum of the gross horizontal areas of the several floors of a BUILDING measured from the exterior face of exterior walls, or from the centerline of a wall separating two BUILDINGS but not including interior parking spaces, loading space for motor vehicles, or any space where the floor-to ceiling height is less than six feet."). However, it too is subject to similar criticism.

By contrast, (even thought the math may end up being the same) it may be less problematic to focus on the *ratio* before and after, which is a measure of density of construction on the land, rather than a specific quantification of interior space. Thus, the Zoning Bylaw defines "FLOOR AREA RATIO" in Section 1.3.9 as, "The ratio of the sum of the NET FLOOR AREA of all BUILDINGS on a LOT to the DEVELOPABLE SITE AREA of the LOT." This ratio reflects the intensity of use as viewed from the exterior, and is not limited to the quantity of use as viewed from the interior.

Accordingly, we recommend changing Section 8.3.6.4 to read as follows:

> "The FLOOR AREA RATIO after the replacement shall not exceed the FLOOR AREA RATIO before the replacement by a factor of more than two."

One of my associates reports that, in prior discussions of mansionization bylaws for another Town, the Attorney General's bylaw review office indicated more comfort with a floor area ratio measure rather than a

direct floor area link. While passing the AG's review of the bylaw for facial validity may be possible either way, we take this comment as reinforcement of our sense that a floor area ratio measure *may* be more likely to withstand scrutiny if challenged in court.

**2. Additional Questions**

Your draft raises some additional questions on which we would like an understanding of your intent before proposing any other specific edits to the draft amendment.

- The draft refers to a "STRUCTURE in residential USE on a nonconforming LOT." The structure could be either (a) in conformity with all dimensional requirements except area and/or frontage; (b) "considered to comply with this Bylaw" under Section 8.3.5; or (c) non-conforming as to various dimensional requirements such as front, side or rear setbacks. Do you intend to allow tear-down and replacement for all or only some of these structures?
- Under Section 8, certain activities can occur as of right (Section 8.3.2 - "Changing a Nonconforming STRUCTURE") and other activities require a special permit from the Board of Appeals (Section 8.3.4 - "Restoration"). How do you envision this latest variant fitting into this rubric?
- By copy of this email, I am asking others in my office to let me know if they have any other observations on question 1 above.

Steve

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## Roland Bartl

**From:** Stephen Anderson
**Sent:** Friday, January 19, 2007 9:12 AM
**To:** Roland Bartl
**Cc:** Scott F. Lacy
**Subject:** Acton/GenPlBd - Draft Flexible Parking Zoning Article

<<ZA flexible parking.doc>>
Roland:

We have annotated our comments and edits on the attached draft Flexible Parking Zoning Article. Let me know if you have any questions.

Steve

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**ARTICLE ZA** **FLEXIBLE PARKING LOT DESIGN**
(Two-thirds vote)

To see if the Town will vote to amend the Zoning Bylaw as follows:

A. In section 6.7, which sets forth standard parking lot design requirements, insert a new section 6.7.9 as follows:

6.7.9 Flexible Parking Lot Design Requirements – A Special Permit or Site Plan Special Permit Granting Authority having jurisdiction, or the Building Commissioner in cases where no special permit or site plan special permit is required, may as an alternative to strict conformance with the requirements of sections 6.7.1, 6.7.2, 6.7.5 thru 6.7.8, and 10.4.3.4 of this Bylaw, including their subsections, and subject to the following requirements, conditions, and findings, approve a Flexible Parking Plan as follows:

6.7.9.1 The special permit or site plan special permit application shall contain a Parking Proof Plan, prepared and stamped by a Registered Professional Engineer, drawn to sufficient detail to demonstrate compliance with all applicable local, State, and Federal laws and regulations, including this Bylaw without the benefit of this section 6.9. The Parking Proof Plan shall show the number of proposed parking spaces and identify the total area of impervious paved surface, parking lot landscaping, and OPEN SPACE on the LOT.

6.7.9.2 The special permit or site plan special permit application shall contain a Flexible Parking Plan, prepared and stamped by a Registered Professional Engineer, showing the same number of parking spaces as on the Parking Proof Plan and a parking lot layout that differs in whole or in part from the requirements of sections 6.7.1, 6.7.2, 6.7.5 thru 6.7.8, and 10.4.3.5. The Flexible Parking Plan shall include sufficient detail, including drainage system details, to demonstrate compliance with all other applicable local, State, and Federal laws and regulations, and it shall identify the total area of impervious paved surface, parking lot landscaping, and OPEN SPACE on the LOT. The Flexible Parking Plan shall be submitted with a list of waivers from the stated sections of this Bylaw and supporting materials detailing why the Flexible Parking Plan is more advantageous for the site; better protects the neighbors including abutting residential properties; is more conservative in its use of natural resources; and overall would be in the better interest of the Town of Acton as compared to the Parking Proof Plan.

6.7.9.3 In cases where a special permit or site plan special permit is not required, the Parking Proof Plan and Flexible Parking Plan shall be submitted to the Building Commissioner.

6.7.9.4 The Flexible Parking Plan shall comply with the following minimum standards:

a) Except for access driveways all parking spaces and paved surfaces shall be set back a minimum of ten feet from any LOT line.

b) The landscaping of the parking lots shall as a minimum comply with section 6.9.4.7 including subsections a) through e).

6.7.9.5 The Special Permit or Site Plan Special Permit Granting Authority, or the Building Commissioner where no special permit or site plan special permit is required, may in its sole discretion approve the Flexible Parking Plan if the Board or the Building Commissioner as applicable, finds and determines that the Parking Proof Plan conforms to the provisions of this Bylaw; and that the Flexible Parking Plan conforms to section 6.7; is more advantageous for the site; better protects the neighbors including abutting residential properties; is more conservative in its use of natural resources; and overall would be in the better interest of the Town of Acton as compared to the Parking Proof Plan.

**Comment:** Generally speaking, it's preferable to avoid granting "waiver" authority to a Building Commissioner (or even an SPGA) to avoid a claim that such a grant violates the requirements for a variance under the statute and the Bylaw. This language is meant to indicate that this is an alternative form of compliance (where strict compliance can be demonstrated by the Proof Plan), not a waiver.

**Deleted:** waive any and all

**Comment:** Should this be 10.4.3.6?

**Comment:** Should this be 10.4.3.6?

**Deleted:** at their

**Deleted:** y

**Deleted:** can

**Deleted:** is superior to the Parking Proof Plan and provides a substantial public benefit.

B. In section 10.4, Site Plan Special Permit, insert under section 10.4.3.6 the following subsection 3):

3) See also section 6.7.9 for Flexible Parking Plans and potential waivers from this section 10.4.3.6.

, or take any other action relative thereto.

**SUMMARY**

The zoning bylaw determines in a detailed manner the layout, design, and landscaping of parking lots in Acton. This zoning bylaw amendment would provide for an optional flexible design approach in most zoning districts. The number of parking spaces that can fit in a given area would be determined by way of a proof plan that is in compliance with the detailed standard design requirements. The same number of parking spaces may then be arranged in a different layout and pattern, subject to minimum performance standards for setbacks and landscaping that currently apply in some of Acton's village districts. The result of flexible parking design can be the more conservative use of land and natural resources, more contiguous open space, less impervious pavement coverage, less storm water runoff, and more flexibility to design a parking lot that is context sensitive and potentially more responsive to the needs of the abutters, the neighborhood, and the Town.

Direct inquiries to: Roland Bartl, Town Planner – (978) 264-9636; planning@acton-ma.gov
Selectman assigned: – ; bos@acton-ma.gov

**Board of Selectmen:**
**Finance Committee:**
**Planning Board:**

## Roland Bartl

**From:** Stephen Anderson
**Sent:** Friday, January 19, 2007 9:22 AM
**To:** Roland Bartl
**Cc:** Scott F. Lacy
**Subject:** Acton/GenPlBd - Draft Zoning Article - Multi-Family Owner-Occupied Requirement

<<ZD owner occupancy.doc>>

Roland:

We have annotated our comments and edits on the attached Zoning Article. Let me know if you have any questions.

Steve

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**ARTICLE ZD** **REMOVAL OF OWNER OCCUPANCY REQUIREMENT**
(Two-thirds vote) **FOR MULTI-FAMILY USES**

Deleted: N

To see if the Town will vote to amend the Zoning Bylaw, section 3, by deleting the second and third sentences in footnote 3 of the Table of Principal Uses.

Comment: Should this be footnote 2? (I'm looking at the Bylaw on Ordinance.com, not the official copy, so you could be right.)

*[Note: The sentences that are proposed for deletion read as follows:*
*"At least one of the DWELLING UNITS shall be occupied by the owner of the property. For purposes of this footnote, the owner shall be defined as one or more individuals residing in a DWELLING UNIT who hold legal or beneficial title and for whom the DWELLING UNIT is the primary residence for voting and tax purposes."]*

, or take any other action relative thereto.

**SUMMARY**

This article would eliminate the owner occupancy requirement for multi-family dwellings in West Acton's Village Residential District and in the South Acton Village District. These two zoning district remain the only two areas where owner occupancy is still required. No such requirement applies in the R-A, R-AA, EAV, EAV-2, or WAV districts where multi-family uses are also allowed, and no owner occupancy requirement applies to single-family homes. The owner-occupancy requirement acts as a barrier to creating rental housing stock and therefore also as a barrier to affordable market-rate rentals. The requirement is also impossible or unrealistic to enforce. The assumption that owner-occupancy brings with it pride in ownership that would ensure well maintained rental properties does not appear to be reflected in reality. There are many investment rental properties in Acton, which for the most part are being kept in decent condition and appearance. On the other hand, there are from time to time owner-occupied properties, including some single family homes that appear neglected, run-down, or abandoned.

Direct inquiries to: Roland Bartl, Town Planner – (978) 264-9636, planning@acton-ma.gov
Selectman assigned: – E-mail: bos@acton-ma.gov

**Board of Selectmen:**
**Finance Committee:**
**Planning Board:**

## Roland Bartl

**From:** Roland Bartl
**Sent:** Thursday, January 18, 2007 5:25 PM
**To:** 'tschnorr@eapdlaw.com'
**Cc:** Manager Department
**Subject:** Town of Acton proposed zoning affecting wireless services

Dear Tom:

Steve Anderson and Don Johnson suggested that I contact you concerning the two attached proposed zoning articles for the April Annual Town Meeting here in Acton. One is draft article generated here on behalf of the Planning Board with amendments to the existing zoning regulations for wireless facilities. Please review it and offer your comments and suggestions. For context you can look up the Acton Zoning Bylaw at:
http://doc.acton-ma.gov/dsweb/Get/Document-12979/2006+Zoning+Bylaws+REDUCED.pdf
and the zoning map at:
http://doc.acton-ma.gov/dsweb/Get/Document-13158/zoning+map+2006.jpg

The other is a petition article filed by residents in reaction to a proposed facility in their neighborhood. The application for that facility has recently been withdrawn, but the petition still stands. Please also comment on it as you might see it in relation to the TCA, and regulations and case law stemming from it. I am concerned that the petition proposal eliminates too much territory. The petition seeks to eliminate all residentially zoned land from consideration for cell towers. Acton's commercial and industrial districts are too few, too small, and too narrow to sufficiently fill coverage gaps. That leaves some Town owned land zoned ARC (Agriculture Recreation Conservation) to perhaps fill the gaps. But, while ARC allows cell towers, much of that land is conservation restricted, wetlands, scenic areas and the like, leaving in fact little or none that the Town might find suitable.
The Planning Board will hold the zoning public hearing on February 13.

Thank you for your help -

*Roland Bartl, AICP*
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